IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

M/s. Punjab Boot House & others.
vs.
Dr. Sohan Singh Sankhla & others.

S.B.CIVIL SECOND APPEAL NO.262/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 6.4.2004 PASSED BY SHRI TARA CHAND SONI, ADDITIONAL DISTRICT JUDGE NO.1, JODHPUR IN CIVIL APPEAL (DECREE) NO.4/1995.

DATE OF JUDGMENT ::: 3.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. MC Bhoot, for the appellants.
Mr. RR Nagori, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

Though this appeal is listed for orders on the stay petition but learned counsels for the parties submitted that the appeal may be decided finally. Learned counsel for

the respondents submits that the respondents never had the intention to disturb the appellants in any manner nor they want to disturb the business of the appellants. It is also submitted by learned counsel for the respondents that the respondents will take due care while undertaking any construction work in the building in question but the respondents have apprehension that if the decree passed by the trial court dated 22.12.1994 will remain as it is, the respondents may be held up for breach of decree on any inadvertent act of the labour doing the construction work and that is why the appeal was preferred against the judgment and decree of the trial court.

It is also submitted that it will be difficult to avoid the futile proceedings of execution of the decree, contempt proceedings etc. because of the reason that the appellants may take undue advantage of the decree of the trial court dated 22.12.1994.

Learned counsel for the appellants submitted that the appellants are interested only to protect their rights which they are having as tenants in the shops of the respondents and they are not interested in any unnecessary litigation. Learned counsel for the appellants also submits that the apprehension of the respondents that they will be dragged into false and frivolous litigation is baseless. It is also submitted that even if any matter will be brought to the Court, the Court will examine the matter and thereafter will pass appropriate order and if the courts will found that the litigation initiated by the appellants

is frivolous, the Court can award compensatory costs also, as provided under the Law.

In view of the above submissions of learned counsel for the parties, virtually there is no dispute between the parties as the landlords are saying that they are not disturbing the appellants in any manner and the appellants/tenants are submitting that they will not drag the appellants in the Court by launching any wrong petition in the Court. It appears that the apprehension of both the parties is because of the events which took place resulting into filing of the present suit and the cause was fire in the building, as stated by learned counsel for the respondents.

In view of the above, with the consent of both the parties, this appeal is allowed and the judgment and decree of the first appellate decree dated 6.4.2004 is set aside and the decree passed by the trial court is modified to the extent that the respondents will be free to raise their construction and shall take due care while raising construction and will not disturb the peaceful enjoyment of the rented premises of the appellants which are in occupation of the appellants. In case, any proceedings are initiated subsequent to it, the same will be decided by the Court in accordance with law.

(PRAKASH TATIA), J.

S.Phophaliya